

**Title 33**  
**ENVIRONMENTAL QUALITY**  
**PART IX. Water Quality**

**Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program**

**Chapter 25. Permit Application and Special LPDES Program Requirements**

**§2501. Application for a Permit**

A. – I.1.i. ...

j. ~~for CAFOs that must seek coverage under a permit after February 27, 2009, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage~~ a nutrient management plan that at a minimum satisfies the requirements specified in LAC 33:IX.2703.E, including, for all CAFOs subject to 40 CFR Part 412, Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

I.2. – R.5.b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:819 (May 2006), LR 33:2069, 2165 (October 2007), LR 33:2360 (November 2007), LR 35:\*\*.

**§2505. Concentrated Animal Feeding Operations**

A. Permit Requirement for CAFOs. *Concentrated animal feeding operations*, as defined in Subsection B of this Section ~~or designated in accordance with Subsection C of this Section~~, are point sources ~~that require LPDES permits for discharges or potential discharges, subject to LPDES permitting requirements as provided in this Chapter.~~ Once an animal feeding operation is defined as a CAFO for at least one type of animal, the LPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

B. – C.3.b. ...

D. Who must seek coverage under an LPDES permit?

1. ~~All CAFO owners or operators must apply for a permit. All CAFO owners or operators must seek coverage under an LPDES permit, except as provided in Paragraph D.2 of this Section.~~ The owner or operator of a CAFO must seek coverage under an LPDES permit if the CAFO discharges or proposes to discharge a regulated wastewater. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge of regulated wastewater will occur. Specifically, the CAFO owner or operator must either apply for an individual LPDES permit or submit a notice of intent for coverage under an LPDES general permit. If the state administrative authority has not made a general permit available to the CAFO, the CAFO owner or operator must submit an application for an individual permit to the state administrative authority.

2. ~~Exception. An owner or operator of a Large CAFO does not need to seek coverage under an LPDES permit otherwise required by this Section once the owner or operator has~~

~~received from the state administrative authority notification of a determination under Subsection F of this Section that the CAFO has "no potential to discharge" manure, litter, or process wastewater.~~

~~3.2. Information to Submit with Permit Application or Notice of Intent. An permit application for an individual permit must include the information specified in LAC 33:IX.2501. A notice of intent for a general permit must include the information specified in LAC 33:IX.2501 and 2515.~~

E. Land application discharges from a CAFO are subject to LPDES requirements. The discharge of manure, litter, or process wastewater to waters of the state from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to LPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this Subsection, where the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified under LAC 33:IX.2703.E.1.f-i, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

1. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural storm water discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in LAC 33:IX.2703.E.1.f-i.

2. Unpermitted Large CAFOs must maintain documentation specified in LAC 33:IX.2703.E.1.i either on site or at a nearby office, or otherwise make such documentation readily available to the state administrative authority upon request.

~~—— F —— No Potential to Discharge" Determinations for Large CAFOs~~

~~1.—— Determination by the State Administrative Authority. The state administrative authority, upon request, may make a case-specific determination that a Large CAFO has "no potential to discharge" pollutants to waters of the state. In making this determination, the state administrative authority must consider the potential for discharges from both the production area and any land application areas. The state administrative authority must also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have "no potential to discharge" if it has had a discharge within the five years prior to the date of the request submitted under Paragraph F.2 of this Section. For purposes of this Section, the term "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to be added to waters of the state under any circumstance or climatic condition. A determination that there is "no potential to discharge" for purposes of this Section only relates to discharges of manure, litter, and process wastewater covered by this Section.~~

~~2.—— Information to Support a "No Potential to Discharge" Request. In requesting a determination of "no potential to discharge," the CAFO owner or operator must submit any information that would support such a determination within the time frame provided by the state administrative authority and in accordance with Subsections G and H of this Section. Such information must include all of the information specified in LAC 33:IX.2501.F and I.1.a-i. The state administrative authority has discretion to require additional information to supplement the request and may also gather additional information through on-site inspection of the CAFO.~~

~~3. Process for Making a "No Potential to Discharge" Determination. Before making a final decision to grant a "no potential to discharge" determination, the state administrative authority must issue a notice to the public stating that a "no potential to discharge" request has been received. This notice must be accompanied by a fact sheet that includes, when applicable, a brief description of the type of facility or activity that is the subject of the "no potential to discharge" determination, a brief summary of the factual basis upon which the request is based for granting the "no potential to discharge" determination, and a description of the procedures for reaching a final decision on the "no potential to discharge" determination. The state administrative authority must base the decision to grant a "no potential to discharge" determination on the administrative record, which includes all information submitted in support of a "no potential to discharge" determination and any other supporting data gathered by the permitting authority. The state administrative authority must notify any CAFO seeking a "no potential to discharge" determination of its final determination within 90 days of receiving the request.~~

~~4. What is the deadline for requesting a "No Potential to Discharge" determination? The owner or operator must request a "no potential to discharge" determination by the applicable permit application date specified in Subsection G of this Section. If the state administrative authority's final decision is to deny the "no potential to discharge" determination, the owner or operator must seek coverage under a permit within 30 days after the denial.~~

~~5. The "no potential to discharge" determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of the state is in violation of the Clean Water Act even if it has received a "no potential to discharge" determination from the state administrative authority. Any CAFO that has received a determination of "no potential to discharge," but which anticipates changes in circumstances that could create the potential for a discharge, should contact the state administrative authority and apply for and obtain permit authorization prior to the change of circumstances.~~

~~6. The state administrative authority retains authority to require a permit. When the state administrative authority has issued a determination of "no potential to discharge," the state administrative authority retains the authority to subsequently require LPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is another reason for the state administrative authority to determine that the CAFO has a potential to discharge.~~

G.F. When must the owner or operator of a CAFO seek coverage under an LPDES permit? Any CAFO that is required to seek permit coverage under Paragraph D.1 of this Section must seek coverage when the CAFO proposes to discharge, unless a later deadline is specified as follows.

1. Operations Defined as CAFOs Prior to April 14, 2003. For operations ~~that were~~ defined as CAFOs under regulations that were in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under an LPDES permit as of April 14, 2003, and comply with all applicable LPDES requirements, including the duty to maintain permit coverage in accordance with Subsection HG of this Section.

2. Operations Defined as CAFOs as of April 14, 2003, ~~Which That~~ Were Not Defined as CAFOs Prior to That Date. For all ~~such CAFOs~~ operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than February 27, 2009.

3. Operations That Become Defined as CAFOs After April 14, 2003, but Which Are Not New Sources. For a newly-constructed CAFO or AFOs and AFOs that makes changes to ~~their~~ operations that result in its becoming defined as a CAFOs for the first time after April 14,

2003, but ~~are~~that is not a new sources, the owner or operator must seek to obtain coverage under an LPDES permit, as follows:

a. for newly-constructed operations not subject to effluent limitations guidelines, within 180 days prior to the time the CAFO commences operation; ~~or~~  
 b. for other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; ~~except that~~or

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later, to seek coverage under an LPDES permit.

4. New Sources. The owner or operator of a n~~New sources~~ must seek to obtain coverage under ~~an LPDES~~ permit at least 180 days prior to the time that the CAFO commences operation.

5. Operations That Are Designated as CAFOs. For operations designated as a CAFO in accordance with Subsection C of this Section, the owner or operator must seek to obtain coverage under ~~an LPDES~~ permit no later than 90 days after receiving notice of the designation.

~~6. No Potential to Discharge. Notwithstanding any other provision of this Section, a CAFO that has received a "no potential to discharge" determination in accordance with Subsection F of this Section is not required to seek coverage under an LPDES permit that would otherwise be required by this Section. If circumstances materially change at a CAFO that has received a "no potential to discharge" determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the state administrative authority and seek coverage under an LPDES permit within 30 days after the change in circumstances.~~

G. Duty to Maintain Permit Coverage. No later than 180 days before the expiration of the permit, or as provided by the state administrative authority, any permitted CAFO must submit an application to renew its permit, in accordance with LAC 33:IX.2501.D, unless the CAFO will not discharge or propose to discharge upon expiration of the permit.

H. ~~Duty to Maintain Permit Coverage. No later than 180 days before the expiration of a permit, the permittee must submit an application to renew its permit, in accordance with LAC 33:IX.2501.I. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:~~

~~1. the facility has ceased operation or is no longer a CAFO; and~~  
~~2. the permittee has demonstrated to the satisfaction of the state administrative authority that there is no remaining potential for a discharge of manure, litter, or associated process wastewater that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.~~Procedures for CAFOs Seeking Coverage Under a General Permit

1. CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with LAC 33:IX.2515.B. The state administrative authority must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by LAC 33:IX.2501.I.1, including a nutrient management plan that meets the requirements of LAC 33:IX.2703.E and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the state administrative authority may request such information from the owner or operator. If the state administrative authority makes a preliminary determination that the notice of intent meets the requirements of LAC 33:IX.2501.I.1 and 2703.E, the state administrative authority

must notify the public of the state administrative authority's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan that will be incorporated into the permit. The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in LAC 33:IX.3115, 3117, and 3119. The state administrative authority may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and/or request a hearing that differs from the time period specified in LAC 33:IX.3113. The state administrative authority must respond to significant comments received during the comment period, as provided in LAC 33:IX.3125, and, if necessary, require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the state administrative authority authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The state administrative authority shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

2. Nothing in this Subsection shall affect the authority of the state administrative authority to require an individual permit under LAC 33:IX.2515.B.3.

I. No Discharge Certification Option

1. The owner or operator of a CAFO that meets the eligibility criteria in Paragraph I.2 of this Section may certify to the state administrative authority that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge, or propose to discharge, manure, litter, or process wastewater is not required to seek coverage under an LPDES permit pursuant to Paragraph D.1 of this Section, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of Paragraphs I.2 and 3 of this Section, and subject to the limitations in Paragraph I.4 of this Section.

2. Eligibility Criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO must document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:

a. the CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO must maintain documentation that demonstrates that:

i. any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) - (viii);

ii. any part of the CAFO's production area that is not addressed by Clause I.2.a.i of this Section is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and

iii. the CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b);

b. the CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:

i. the elements of LAC 33:IX.2703.E.1.a - i and 40 CFR 412.37(c); and

ii. all site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to Clause I.2.a.i of this Section; and

c. the CAFO will maintain documentation required by this Paragraph either on site or at a nearby office, or otherwise make such documentation readily available to the state administrative authority upon request.

3. Submission to the State Administrative Authority. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator must complete and submit to the state administrative authority, by certified mail or an equivalent method of documentation, a certification that includes, at a minimum, the following information:

a. the legal name, address, and phone number of the CAFO owner or operator (see LAC 33:IX.2501.B);

b. the CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;

c. a statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in Paragraph I.2 of this Section; and

d. the following certification statement, signed in accordance with the signatory requirements of LAC 33:IX.2503:

"I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of LAC 33:IX.2505.I. I have read and understand the eligibility requirements of LAC 33:IX.2505.I.2 for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by LAC 33:IX.2505.I.3. I also understand the conditions set forth in LAC 33:IX.2505.I.4, 5, and 6 regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Term of Certification. A certification that meets the requirements of Paragraphs I.2 and 3 of this Section shall become effective on the date it is submitted, unless the state administrative authority establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in Paragraph I.2 of this Section.

5. Withdrawal of Certification

a. At any time, a CAFO may withdraw its certification by notifying the state administrative authority by certified mail or an equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the state administrative authority. The CAFO does not need to specify any reason for the withdrawal in its notification to the state administrative authority.

b. If a certification becomes invalid in accordance with Paragraph I.4 of this Section, the CAFO must withdraw its certification within three days of the date on which the

CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in Paragraph D.1 of this Section to seek permit coverage if it discharges or proposes to discharge.

6. Recertification

- a. A previously-certified CAFO that does not discharge or propose to discharge may recertify in accordance with this Subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:
- i. the CAFO had a valid certification at the time of the discharge;
  - ii. the owner or operator satisfies the eligibility criteria of Paragraph I.2 of the Section, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;
  - iii. the CAFO has not previously recertified after a discharge from the same cause; and
  - iv. the owner or operator submits to the state administrative authority for review a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge, in addition to submitting a certification in accordance with Paragraph I.3 of this Section.
- b. Notwithstanding Paragraph I.4 of this Section, a recertification that meets the requirements of Clauses I.6.a.iii and iv of this Section shall only become effective 30 days from the date of submission of the recertification documentation.

J. Effect of Certification

1. An unpermitted CAFO certified in accordance with Subsection I of this Section is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to Paragraph D.1 and Subsection F of this Section, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act Section 301(a) prohibition against unauthorized discharges from point sources.
2. In any enforcement proceeding for failure to seek permit coverage under Paragraph D.1 or Subsection F of this Section that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in Paragraph I.3 or Clause I.6.a.iv of this Section within at least five years prior to the discharge, or withdrew its certification in accordance with Paragraph I.5 of this Section. Design, construction, operation, and maintenance in accordance with the criteria of Paragraph I.2 of this Section satisfies this burden.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006), LR 33:2360 (November 2007) , LR 35:\*\*.

**§2515. General Permits**

A. – B.2.f. ...

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in LAC 33:IX.2505.H.

B.3. – C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2276 (October 2000), LR 26:2553 (November 2000), LR 28:468 (March 2002), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2511 (October 2005), LR 33:2167 (October 2007), LR 35:\*\*.

## **Chapter 27. LPDES Permit Conditions**

### **§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits**

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. – D....

E. Concentrated Animal Feeding Operations (CAFOs). Any permit issued to a CAFO must include the following requirements in Paragraphs E.1-6 of this Section.

1. ~~Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by February 27, 2009. CAFOs that seek to obtain coverage under a permit after February 27, 2009, must have a nutrient management plan developed and implemented upon the date of permit coverage. Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this Paragraph and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. The nutrient management plan must, to the extent applicable:~~

1.a. – 4.f. ...

g. a statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a Natural Resource Conservation Service (NRCS) certified nutrient management planner; and

h. the actual crop(s) planted and actual yield(s) for each field; the actual nitrogen and phosphorus content of the manure, litter, and process wastewater; the results of calculations conducted in accordance with Clauses E.5.a.ii and 5.b.iv of this Section; and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months, and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with Subparagraph E.5.b of this Section, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with Clause E.5.b.iv of this Section, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the Nutrient Management Plan. Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and



other conditions in the nutrient management plan determined by the state administrative authority to be necessary to meet the requirements of Paragraph E.1 of this Section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by Subparagraph E.1.h of this Section and, as applicable, 40 CFR 412.4(c), must include the fields available for land application; field-specific rates of application properly developed, as specified in Subparagraphs E.5.a and b of this Section, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the state administrative authority specifies a particular one of the approaches that shall be used.

a. Linear Approach. A linear approach is an approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications.

i. The terms must include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the state administrative authority, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors used in the terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field, such as a pasture or fallow field; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the state administrative authority for each crop or use identified for each field; credits for all nitrogen in the field that will be plant-available; consideration of multi-year phosphorus application; and accounting for all other additions of plant-available nitrogen and phosphorus to the field. In addition, the terms must include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

ii. Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application.

b. Narrative Rate Approach. A narrative rate approach is an approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications.

i. The terms must include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the state administrative authority, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors used in the terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses, such as pasture or fallow fields (including alternative crops identified in accordance with Clause E.5.b.ii of this Section); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the state

administrative authority for each crop or use identified for each field. In addition, the terms must include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by Subparagraph E.1.g of this Section; credits for all nitrogen in the field that will be plant-available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

ii. The terms of the nutrient management plan may include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the state administrative authority for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in Clause E.5.b.i of this Section.

iii. For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the state administrative authority, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant-available; consideration of multi-year phosphorus application; accounting for all other additions of plant-available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

iv. CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in Clause E.5.b.i of this Section before land applying manure, litter, and process wastewater, and must rely on the following data:

(a). a field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by Clause E.5.b.i of this Section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the state administrative authority; and

(b). the results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

6. Changes to a Nutrient Management Plan. Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan that was previously submitted to the state administrative authority.

a. The CAFO owner or operator must provide the state administrative authority with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of Clauses E.5.a.ii and 5.b.iv of this Section are not subject to the requirements of this Paragraph.

b. The state administrative authority must review the revised nutrient management plan to ensure that it meets the requirements of this Section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the state administrative authority must notify the CAFO owner or operator, and, upon such notification, the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the state administrative authority must determine whether such changes are substantial changes as described in Subparagraph E.6.c of this Section.

i. If the state administrative authority determines that the changes to the terms of the nutrient management plan are not substantial, the state administrative authority must make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

ii. If the state administrative authority determines that the changes to the terms of the nutrient management plan are substantial, the state administrative authority must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments and hearing requests, and the hearing process, if a hearing is held, must follow the procedures applicable to draft permits set forth in LAC 33:IX.3115, 3117, and 3119. The state administrative authority may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in LAC 33:IX.3113. The state administrative authority must respond to all significant comments received during the comment period as provided in LAC 33:IX.3125, and require the CAFO owner or operator to further revise the nutrient management plan, if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the state administrative authority incorporates the revised terms of the nutrient management plan into the permit, the state administrative authority must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

i. addition of new land application areas not previously included in the CAFO's nutrient management plan, except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing LPDES permit in accordance with the requirements of Paragraph E.5 of this Section, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the

newly added land application area, such addition of new land would be a change to the CAFO owner or operator's nutrient management plan, but not a substantial change for purposes of this Section;

ii. any changes to the field-specific maximum annual rates for land application, as set forth in Subparagraph E.5.a of this Section, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in Subparagraph E.5.b of this Section;

iii. addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with Paragraph E.5 of this Section; and

iv. changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006), LR 33:2168 (October 2007), LR 33:2360 (November 2007) , LR 35:\*\*.

## **Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits**

### **§2903. Modification or Revocation and Reissuance of Permits**

A. – A.1.p. ...

q. ~~Reserved.~~Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with LAC 33:IX.2505.H and 2515 is not a cause for modification pursuant to the requirements of this Section.

1.r. – 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:724 (June 1997), LR 23:1524 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2283 (October 2000), LR 27:45 (January 2001), LR 28:470 (March 2002), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 32:1033 (June 2006) , LR 35:\*\*.

### **§2905. Minor Modifications of Permits**

A. – A.6. ...

7. incorporate conditions of a POTW pretreatment program that has been approved in accordance with the procedures in LAC 33:IX.6121 (or a modification thereto that has been approved in accordance with the procedures in LAC 33:IX.6135) as enforceable conditions of the POTW's permit; and

8. incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of LAC 33:IX.2703.E.6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:46 (January 2001), repromulgated LR 30:231 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2431 (October 2005), LR 35:\*\*.

## **Chapter 49. Incorporation by Reference**

### **§4903. 40 CFR, Chapter I, Subchapter N**

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2007, are hereby incorporated by reference.

B. Amendments as promulgated on July 24, 2007, in the *Federal Register*, 72 FR 40245-40250, to 40 CFR Part 412, Concentrated Animal Feeding Operations (CAFO) Point Source Category, and to 40 CFR 412.37 and 412.46 in 73 FR 70485-70486, November 20, 2008, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:604 (April 2006), LR 32:819 (May 2006), LR 33:641 (April 2007), LR 34:867 (May 2008), LR 35:\*\*.